Office - Supreme Court, U.S.
FILED
JUN 18 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1971

In the Supreme Court of the United States

October Term, 1984

SUN OIL COMPANY,
Petitioner,

vs.

RICHARD WORTMAN and HAZEL MOORE, Individually and As Representatives of All Producers and Royalty Owners to Whom Sun Oil Company Has Made or Should Make Payment of Suspended Proceeds of Royalties Pursuant to FPC Opinions or FERC,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

GERALD SAWATZKY*
JIM H. GOERING
FOULSTON, SIEFKIN, POWERS & EBERHARDT
700 Fourth Financial Center
Wichita, Kansas 67202
(316) 267-6371

WILLIAM C. PHELPS
Sun Exploration and Production Company
IV North Park
Post Office Box 2880
Dallas, Texas 75221
Attorneys for Petitioner

Date: June 18, 1985

*Counsel of Record

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

QUESTIONS PRESENTED

The questions presented here are identical to those in *Phillips Petroleum Company v. Shutts, cert. granted,* ..... U.S. ....., 105 S. Ct. 242 (1984) (arguments heard on February 25, 1985). As in *Shutts,* the Kansas courts here certified a nationwide class and applied Kansas law to claims arising in other states between nonresidents of Kansas. Kansas had no connection with the transactions. In so proceeding, the Kansas courts improperly asserted jurisdiction over a nationwide class and also ignored the conflicting substantive law applicable to the claims which arose in other states.

Accordingly, the questions presented are:

1. Do basic principles of federalism and the due process clause of the Fourteenth Amendment permit a state court to exercise jurisdiction over unnamed class members and their claims when (1) the class members are nonresidents and have no contacts with the forum states; (2) the class members have not affirmatively consented to the court's jurisdiction; and (3) the claims arose entirely in other states and the forum has no significant interest in them?

2. Do the due process clause of the Fourteenth Amendment and the full faith and credit clause of the Constitution allow a state court, in a nationwide class action, to apply its own law to transactions between nonresidents that occur in other states and to which the forum has no connection?

TABLE OF CONTENTS

OPINIONS BELOW 1
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2
STATEMENT OF THE CASE 3
REASONS FOR GRANTING THE WRIT 6

I. THIS CASE PRESENTS AN IMPORTANT CONSTITUTIONAL QUESTION INVOLVING THE LIMITS OF STATE COURT JURISDICTION THAT HAS BEEN THE SUBJECT OF CONFLICTING DECISIONS IN STATE COURTS, THAT HAS IMPORTANT PRACTICAL CONSEQUENCES FOR ALL THE STATES, AND THAT CAN ONLY BE RESOLVED BY THIS COURT 6

II. BY HOLDING THAT ONLY KANSAS LAW APPLIES TO ALL CLAIMS IN THE CLASS ACTION, THE DECISION BELOW VIOLATES SUN'S RIGHTS SECURED BY THE DUE PROCESS AND FULL FAITH AND CREDIT CLAUSES 12

CONCLUSION 16

Table of Cases

Allstate Insurance Co. v. Hague, 449 U.S. 302 (1981) 12
Anthony v. General Motors Corp., 33 Cal. App. 3d 699, 109 Cal. Rptr. 254 (1973) 8
Bott v. American Hydrocarbon Corp., 458 F.2d 229 (5th Cir. 1972) 12
Brandon v. Chefetz, 121 Misc. 2d 54, 467 N.Y.S.2d 312 (N.Y. Sup. Ct. 1983) 8
Feldman v. Bates Mfg. Co., 143 N.J. Super 84, 362 A.2d 1177 (App. Div. 1976) 8
Geller v. Tabas, 462 A.2d 1078 (Del. 1983) 8
Glazer v. Glazer, 278 F. Supp. 476 (E.D. La. 1968) 13
Hanson v. Denckla, 357 U.S. 235 (1958) 7
Hull v. Freedman, 383 S.W.2d 236 (Tex. Civ. App. 1964) 14
International Shoe Co. v. Washington, 326 U.S. 310 (1945) 7
Keeton v. Hustler Magazine, Inc., 465 U.S. ....., 104 S. Ct. 1473 (1984) 9, 15
Klemow v. Time, Inc., 466 Pa. 189, 352 A.2d 12, *cert. denied*, 429 U.S. 828 (1976) 8
Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) 11
Miner v. Gillette Co., 87 Ill. 2d 7, 428 N.E.2d 478 (1981), *cert. granted*, 456 U.S. 914, *cert. dismissed*, 459 U.S. 86 (1982) 7-8
Morris v. Watsco Inc., 385 Mass. 672, 433 N.E.2d 886 (1982) 13
Multistate Plaintiff Class Actions: Jurisdiction and Certification, 92 Harv. L. Rev. 718 (1979) 7
O'Neal v. Union Producing Co., 153 F.2d 157 (5th Cir.), *cert. denied*, 329 U.S. 715 (1946) 14

Phillips Petroleum Company v. Shutts, cert. granted, ... U.S. ....., 105 S. Ct. 242 (1984) 1, 3, 6, 11

Phillips Petroleum Co. v. Stahl Petroleum Co., 569 S.W.2d 480 (Tex. 1978) 12

Rush v. Savchuk, 444 U.S. 320 (1980) 7

Schlosser v. Allis-Chalmers Corp., 86 Wis. 2d 226, 271 N.W.2d 879 (1978) 8

Shaffer v. Heitner, 433 U.S. 186 (1977) 7

Shutts v. Phillips Petroleum Co. (*"Shutts I"*), 222 Kan. 527, 567 P.2d 1292 (1977), *cert. denied,* 434 U.S. 1068 (1978), *reh'g denied,* 435 U.S. 961 (1978) 8

Shutts v. Phillips Petroleum Co., 235 Kan. 195, 679 P.2d 1159, *cert. granted,* ..... U.S. ....., 105 S. Ct. 242 (1984) 3, 7

Southern Union Exploration Co. v. Wynn Exploration Co., Inc., 624 P.2d 536 (N.M. App. 1981) 14

Succession of Drake, 359 So. 2d 249 (La. App. 1978) 11

Tennessee Carolina Transport, Inc. v. Strick Corp., 283 N.C. 423, 196 S.E.2d 711 (1973) 13

Williams v. Petroleum Helicopters, Inc., 234 So. 2d 522 (La. App. 1970) 13

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 9

Wortman v. Sun Oil Co., 236 Kan. 266, 690 P.2d 385 (1984) 1, 3, 6, 14

Table of Other Authorities

F.P.C. Opinion 699 ..... 4, 14
F.P.C. Opinion 699H 4, 14
F.P.C. Opinion 770 ..... 4, 5
F.P.C. Opinion 770A 4, 5
K.S.A. § 60-223 2
K.S.A. § 60-511 14
K.S.A. § 60-512 14
K.S.A. § 60-516 13
Louisiana Civil Code, Article 1938 (1983 Supp.) 11
Louisiana Civil Code, Article 1939 (1983 Supp.) 11, 14
Martin, *Constitutional Limitations on Choice of Law*, 61 Cornell L. Rev. 185, 221 (1976) 15
Mississippi Code § 15-1-29 (1984 Supp.) 15
United States Constitution, Article 4, § 1 2
United States Constitution, Fourteenth Amendment .. 1, 2
Weintraub, *Commentary on the Conflict of Laws* § 9.2B (2d ed. 1980) 15
12 Okla. Stat. Ann. § 95 15
18 C.F.R. § 154.67 (1981) 4
28 U.S.C. § 1257(3) 2

No.

In the Supreme Court of the United States

October Term, 1984

SUN OIL COMPANY,
Petitioner,

vs.

RICHARD WORTMAN and HAZEL MOORE, Individually and As Representatives of All Producers and Royalty Owners to Whom Sun Oil Company Has Made or Should Make Payment of Suspended Proceeds of Royalties Pursuant to FPC Opinions or FERC,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

Petitioner Sun Oil Company[1] prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of Kansas entered in these proceedings October 26, 1984.

OPINIONS BELOW

The opinion of the Supreme Court of Kansas (236 Kan. 266, 690 P.2d 385) is set forth at page A2 of the Appendix. The unpublished Memorandum Decision of the District Court of Barber County, Kansas, is set forth on page A13 of the Appendix; and the unpublished Journal Entry of Judgment of said court is set forth on page A27 of the Appendix.

1. Petitioner's statement pursuant to Supreme Court Rule 28.1 is set forth in the Appendix on page A34.

JURISDICTION

The opinion of the Supreme Court of Kansas was entered on October 26, 1984. A motion for rehearing was filed on November 15, 1984, and was denied on April 12, 1985.[2] The Petition for A Writ of Certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law. . . .

Article 4, § 1 of the United States Constitution provides in pertinent part:

> Full faith and credit shall be given to each state to the public acts, records, and judicial proceedings of every other state.

The statutory provision involved is K.S.A. § 60-223, which is set forth at page A30 of the Appendix.

---

2. The order denying rehearing is set forth at page A1 of the Appendix.

STATEMENT OF THE CASE

This case rose through the Kansas courts a few months after *Phillips Petroleum Company v. Shutts*,[3] *cert. granted*, ... U.S. ....., 105 S. Ct. 242, and presents virtually identical facts. Petitioner in this case, Sun Oil Company (Sun), is a Delaware corporation with its principal place of business in Texas. Most of the plaintiffs are owners of mineral leaseholds located either in Texas, Oklahoma, or Louisiana, and a few of the plaintiffs own mineral leaseholds located in Mississippi, New Mexico, or Kansas. In the Kansas courts, the plaintiff royalty owners sought interest on certain price increases for sales of natural gas which were received by Sun, but which were "suspended" for a period of time.

Sun produces natural gas from lands owned by respondents. The gas is produced for transportation and resale in interstate commerce at prices regulated by the Federal Energy Regulatory Commission (F.E.R.C.), successor to the Federal Power Commission (F.P.C.). The "suspended" royalties arose pursuant to F.P.C. regulations which allowed Sun to begin charging its purchasers increased prices even though the price increases had not

---

3. In noting that this case presents the same class action issues and choice of law issues presented in *Shutts v. Phillips Petroleum Co.*, 235 Kan. 195, 679 P.2d 1159, *cert. granted*, ... U.S. ....., 105 S. Ct. 242 (1984), the Kansas Supreme Court stated as follows:

> The foregoing issues concerning commonality, due process, and improper interest are identical to those raised and decided in our previous decision in Shutts II . . .
>
> It is interesting to note Sun Oil Company, appellant in this case, filed an amicus brief in Shutts II in opposition to the royalty owners' position there. All three issues were thoroughly discussed and decided adverse to Sun's position in that case.

Wortman v. Sun Oil Co., 236 Kan. 266, 270, 690 P.2d 385, 389-90 (1984), Appendix page A8.

yet been finally approved by the F.P.C. *See* 18 C.F.R. § 154.67 (1981). If the price increases were not ultimately approved, they were to be refunded to the purchasers. Sun received the price increases but continued to pay out royalties only on that portion of the gas price not related to the price increases. After the final resolution of court challenges to the pertinent F.P.C. Opinions (regarding the price increases), the additional "suspended" royalties were promptly remitted to Sun's royalty owners.

While the leaseholds involved in this action are from Texas, Oklahoma, Louisiana, New Mexico, Mississippi, and Kansas, there is no contention that the *non-Kansas* lessors have any relationship whatsoever to the State of Kansas. Their leaseholds are located outside of Kansas. Their lease contracts were executed pursuant to the laws of states other than Kansas. Their minerals are located outside of Kansas. And there is no contention that the sale of natural gas produced from their leaseholds, or any of the price increases or interest claims herein involved, have any relationship to Kansas.

The price increases which were the basis for the Kansas court action were set out in F.P.C. Opinions 699, 699H, 770, and 770A.[4] It was during the administrative and court appeals concerning these F.P.C. price increases that Sun began to receive the increased rates on which plaintiffs now claim interest.

The price increases allowed by Opinions 699 and 699H were collected by Sun from July, 1974, through April, 1976. The increased royalties were paid out in July, 1976.

---

4. F.P.C. Opinion 586 was also involved, but only $13,000 in suspended royalties were at issue. The $13,000 was paid out by Sun in 1978. The record does not reflect whether any of the $13,000 involved Kansas properties. Overall, only 9.2% of the Sun properties affected by Opinion 586 were in Kansas.

A total of 670 properties were involved: 43.7% from Texas, 24% from Oklahoma, 22.8% from Louisiana, 3.9% from New Mexico, 3.4% from Mississippi, and 2.1% from Kansas. The suspended royalties paid to lessors from Kansas represent only six-hundredths of one percent [.0006] of the total amount of money involved.

The price increases allowed by Opinions 770 and 770A were collected by Sun between December, 1976, and April, 1978. The increased royalties were paid out principally in April, 1978. A total of 690 properties were involved: 40.3% from Texas, 31.6% from Oklahoma, 23.6% from Louisiana, 3.3% from New Mexico, 0.9% from Mississippi, and 0.3% from Kansas. The suspended royalties paid to lessors from Kansas represent five-tenths of one percent [.005] of the total amount of money involved.

Plaintiffs' lawsuit was filed as a class action on August 30, 1979. The Kansas District Court certified a nationwide plaintiff class. On October 13, 1983, the case was tried to the District Court of Barber County, Kansas, without a jury, and on December 12, 1983, the Court issued a written Memorandum Decision (Appendix page A13) holding Sun liable to the thousands of royalty owners involved.[5] The Court applied the Kansas legal standards regarding the recovery of interest, despite the fact that only $13,695 of the $3,843,000 of suspended royalties paid out was attributable to Kansas leases. It is the interest on those suspended royalties which is involved in this action.

---

5. The constitutional issues involved herein were initially raised in Sun's Answer. Each of the constitutional arguments pertaining to nationwide class actions and the choice of law issues were again raised at trial and were extensively addressed in the Requested Findings of Fact and Conclusions of Law which Sun filed with the Kansas District Court. Further, all such issues were fully briefed and argued to the Kansas Supreme Court.

The Kansas Supreme Court affirmed the decision of the lower court. In so ruling, the Kansas Supreme Court noted that the legal issues presented in this case are identical to those presented in *Phillips Petroleum Co. v. Shutts*. *Wortman v. Sun Oil Co.*, 236 Kan. 266, 270, 690 P.2d 385, 389-90 (1984), Appendix page A8.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS AN IMPORTANT CONSTITUTIONAL QUESTION INVOLVING THE LIMITS OF STATE COURT JURISDICTION THAT HAS BEEN THE SUBJECT OF CONFLICTING DECISIONS IN STATE COURTS, THAT HAS IMPORTANT PRACTICAL CONSEQUENCES FOR ALL THE STATES, AND THAT CAN ONLY BE RESOLVED BY THIS COURT.

In this case as in the *Shutts*[6] case which rose through the Kansas courts a few months earlier, the Kansas court has extended its jurisdictional reach over unnamed class members further than any other state court. The Kansas court held that all assertions of jurisdiction over unnamed class members from other states are constitutional if those class members are provided with notice and adequate representation, and that Kansas law will be applied to claims normally governed by the laws of the state in which the claims arose.

The jurisdictional issue is important because the court below resolved fundamental questions of federalism in a manner which is at odds with prior holdings of this Court.[7]

---

6. *Phillips Petroleum Company v. Shutts, cert. granted,* ..... U.S. ....., 105 S. Ct. 242 (1984).

7. Petitioner has standing to raise the question of jurisdiction over these nonresident class members. This Court has

(Continued on following page)

In *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977), this Court stated that "*all* assertions of state court jurisdiction must be evaluated according to the standards set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny * * *." Three years later, in *Rush v. Savchuk*, 444 U.S. 320 (1980), this Court acknowledged the continuing validity of the foregoing language from the *Shaffer* case. *See Rush*, 444 U.S. at 327. Particularly in a case like this, where there is a complete absence of contact between the forum state and the nonresident class members, the "minimum contacts" requirement is not satisfied. *Rush v. Savchuk*, 444 U.S. at 332-33; note, *Multistate Plaintiff Class Actions: Jurisdiction and Certification*, 92 Harv. L. Rev. 718, 731 (1979) ("No matter how heavily the scale might otherwise tip against the nonresident, jurisdiction will not be upheld where the nonresident has no contacts whatsoever with the particular state.").

The diverse rulings which state courts have issued on these types of class action issues interject an element of uncertainty and tension into our system of federalism which only this Court can resolve. The Kansas courts have twice held (in this case and in the *Shutts* case) that nationwide class actions will be entertained by the Kansas courts despite the lack of any *nexus* whatsoever between Kansas and the unnamed class members. Illinois has also ignored the nexus requirement. *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 478 (1981), *cert. granted*,

---

Footnote continued—

held that when, as here, acquisition of jurisdiction over a nonresident is required before a state court is empowered to proceed with the action, then "any defendant affected by the court's judgment has that 'direct and substantial personal interest in the outcome' that is necessary to challenge whether that jurisdiction was in fact acquired." *Hanson v. Denckla*, 357 U.S. 235, 245 (1958).

456 U.S. 914, *cert. dismissed,* 459 U.S. 86 (1982). In direct conflict are the Pennsylvania and New Jersey courts, which have properly required nexus. *Klemow v. Time, Inc.,* 466 Pa. 189, 352 A.2d 12, *cert. denied,* 429 U.S. 828 (1976) (plaintiff class limited to residents and those nonresidents who submit themselves to the court's jurisdiction); *Feldman v. Bates Mfg. Co.,* 143 N.J. Super 84, 362 A.2d 1177 (App. Div. 1976) (a state court cannot assert jurisdiction over nonresident class members who have no "contacts, ties or relations" with the state).

The Wisconsin and Delaware courts have issued decisions which can be seen as allowing the assertion of jurisdiction over unnamed class members when the underlying claims have a nexus with the forum state. *Schlosser* v. *Allis-Chalmers Corp.,* 86 Wis. 2d 226, 271 N.W.2d 879 (1978); *Geller v. Tabas,* 462 A.2d 1078 (Del. 1983). *See also, Shutts v. Phillips Petroleum Co.* ("*Shutts I*"), 222 Kan. 527, 567 P.2d 1292 (1977), *cert. denied,* 434 U.S. 1068 (1978), *reh'g denied,* 435 U.S. 961 (1978). The New York courts have analyzed the requisite relationship between class action litigation and a forum. *Brandon v. Chefetz,* 121 Misc. 2d 54, 467 N.Y.S.2d 312 (N.Y. Sup. Ct. 1983). And, the California courts have discussed, but not decided, the issue of jurisdiction over nonresident class members. *Anthony v. General Motors Corp.,* 33 Cal. App. 3d 699, 109 Cal. Rptr. 254, 260 (1973).

The broad spectrum of state court decisions regarding assertions of jurisdiction over unnamed class members creates uncertainty and conflict, and will inevitably place an impermissible and *unnecessary* strain upon our system of federalism. For example, the Kansas court's decision in this case will almost certainly be unenforceable in New Jersey, in Pennsylvania, and in the unknown number of other states which may choose to follow New Jersey and Pennsylvania.

The pressure placed on our system of federalism is exacerbated by the fact that unbridled assertions of jurisdiction over nationwide classes, by their very nature, create a legal environment which effectively denies many states the opportunity to decide important legal questions affecting their citizens; and not because the residents of those states have affirmatively chosen to litigate their claims in other forums, such as in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. ....., 104 S. Ct. 1473 (1984). It is the minimum contacts requirement which helps to "ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

This case is a fine example of the way in which assertions of jurisdiction, free of the strictures of "minimum contacts," make some states powerful and other states powerless. Although the Kansas courts have entertained numerous class actions (involving nonresidents) concerning awards of interest on suspended royalties, Oklahoma has never had an opportunity to decide a suspense royalty case. It is not simply a question of whether Oklahoma law should be applied, but whether Oklahoma should be allowed to determine what its law is, especially when unnamed Oklahoma class members have not affirmatively chosen to have their claims litigated in Kansas, a state with which they have no contacts. By entertaining the current class action, the court below transformed the Kansas state court into a national court. The Kansas court's action, if allowed to stand, will eliminate the courts of Oklahoma and Texas from any meaningful role in adjudicating claims involving their own residents, even though more than 1,100 Oklahoma and more than 1,150 Texas leases are involved.

If nationwide class actions are allowed despite the unnamed class members' lack of either minimum contacts with the forum or of their affirmative consent to jurisdiction, races to the courthouse will determine which states are powerful and which states are powerless. Many states will be disenfranchised from any role in adjudicating claims involving their own residents, even though those residents have not affirmatively chosen to litigate in a foreign jurisdiction.

A state is not acting as a "coequal sovereign" when it renders decisions which encourage forum shopping. Lawyers for would-be plaintiffs groups will actively seek out those forums which allow cases like this one to be heard in their courts. And, even if every state were to assert jurisdiction over cases involving nationwide classes, plaintiffs' lawyers would still "forum shop" for those states with the most sympathetic procedural or conflicts-of-law rules; knowing that they have the right to represent unnamed class members unless those class members take affirmative action to exclude themselves from the litigation. This Court should grant certiorari to decide whether our principles of federalism envision or permit these contact-less nationwide class actions.

Given the Kansas court's ruling that the minimum contacts standards apply to defendants and not to plaintiffs, this Court should grant review to determine whether such a distinction is constitutionally sound. The very nature of modern litigation, and in particular, the increasing use of declaratory judgment actions and "defendant classes" blurs the distinction between plaintiffs and defendants.

Even an unnamed plaintiff class member has important rights at stake, irrespective of the fact that she is designated as a "plaintiff." A cause of action "is a species

of property protected by the Fourteenth Amendment's Due Process Clause." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). The fact that the decision below was rendered by Kansas, the state which apparently has the most liberal view in the nation with respect to awarding interest, should not be used to blur the point that it makes no sense, constitutionally or otherwise, to permit legal doctrines which set different minimum contacts criteria for plaintiffs and defendants. All parties, both plaintiff and defendant, deserve the protection of the minimum contacts requirement.

An adverse judgment is no less intrusive upon a plaintiff class member's property interest than any other adverse judgment. For example, imagine a case in which a Kansas royalty owner with a suspense royalty claim is involuntarily joined in a class action in Louisiana—where the interest rate is seven percent and no "interest on interest" can be awarded. Louisiana Civil Code, Articles 1938 and 1939. *Succession of Drake*, 359 So. 2d 249 (La. App. 1978). The Kansas resident obviously would have a lot at stake (and a lot to lose) and should have the right *not* to have her claim adjudicated by a Louisiana court, *unless* she has minimum contacts with Louisiana (or unless she affirmatively subjects herself to jurisdiction in that state).

In short, this case presents the identical jurisdictional issues presented in the *Phillips Petroleum Co. v. Shutts* case. Review should be granted, so that the result in this case will be consistent with the federal constitutional principles to be applied by this Court in *Shutts*.

II. BY HOLDING THAT ONLY KANSAS LAW APPLIES TO ALL CLAIMS IN THE CLASS ACTION, THE DECISION BELOW VIOLATES SUN'S RIGHTS SECURED BY THE DUE PROCESS AND FULL FAITH AND CREDIT CLAUSES.

The Kansas court applied Kansas law to the claims of all class members. In so doing, the Kansas court has ignored this Court's recent holding that "for a state's substantive law to be selected in a constitutionally permissible manner, that state must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its laws is neither arbitrarily nor fundamentally unfair." *Allstate Insurance Co. v. Hague,* 449 U.S. 302, 312-13 (1981). The egregious nature of the Kansas court's ruling is amplified by the fact that Texas has ruled that in actions for "suspense royalties" based upon Texas oil and gas leases, a plaintiff's claim obtains its substantive basis from the Texas interest statute, not from the FPC/FERC "undertaking" rates adopted by Kansas. *Phillips Petroleum Co. v. Stahl Petroleum Co.,* 569 S.W.2d 480 (Tex. 1978). The interest statutes from the other states involved represent legislative pronouncements of those states' substantive policies regarding interest, and Kansas has no right to belittle or ignore those laws simply because those states have set interest rates, by statute, at rates lower than those which the Kansas courts have chosen to award under Kansas law. Kansas has clearly trampled on the substantive[8] policies of other states.

---

8. It cannot seriously be doubted that each state has the right to pronounce its own substantive rules regarding awards of interest. Interest is a matter of substantive law, governed by the laws of the State in which a cause of action arises. "Texas considers interest damages as a substantive matter controlled by the law of the state where the cause of action arose." *Bott v. American Hydrocarbon Corp.,* 458 F.2d 229, 231 (5th Cir. 1972).

(Continued on following page)

The opinion below violates Sun's due process rights by imposing Kansas law upon, for example, the dispute between Sun and its Texas royalty owners. There is no contention that the Texas lessors have any relationship whatsoever to the State of Kansas. Their leaseholds are located outside of Kansas. Their lease contracts were executed pursuant to the laws of Texas. Their minerals are located outside of Kansas. And there is no contention that the sale of natural gas produced from their leaseholds, or any of the price increases or interest claims involved herein, have any relationship to Kansas. The contractual relationship between Sun and property owners in Texas is obviously governed by Texas law. The refusal of the Kansas Court to apply that law is a denial of due process, and a violation of the full faith and Credit Clause of the United States Constitution.

Another example of the Kansas court's ignoring the applicable law of other states is its treatment of the statute of limitations issue—a point not involved in the *Shutts* case. Kansas, like many states, has a statute which requires the Kansas courts to apply the statute of limitations from the state in which the claim arose.[9] Yet in the

---

Footnote continued—

Similarly, under Louisiana law, interest is a substantive issue governed by the law of the State in which the cause of action arose. *Williams v. Petroleum Helicopters, Inc.*, 234 So. 2d 522 (La. App. 1970). *See also Glazer v. Glazer*, 278 F. Supp. 476, 486 (E.D. La. 1968); *Morris v. Watsco Inc.*, 385 Mass. 672, 433 N.E.2d 886 (1982); and *Tennessee Carolina Transport, Inc. v. Strick Corp.*, 283 N.C. 423, 196 S.E.2d 711 (1973).

9. K.S.A. § 60-516 provides: "Where the cause of action has arisen in another state or country and by the laws of the state or country where the cause of action arose an action cannot be maintained thereon by reason of lapse of time, no action can be maintained thereon in this state except in favor of one who is a resident of this state and who has held the cause of action from the time it accrued."

present case, the Kansas court chose to ignore that statute in deciding that it would apply the five year Kansas limitations statute to all claims. *Wortman,* 236 Kan. 266, 270-73, 690 P.2d 385, 390-91 (1984), Appendix at page A11.

The statute of limitations issue pertains to those claims arising out of royalties suspended pursuant to F.P.C. Opinions 699 and 699H. These suspended royalties were paid out by Sun in July, 1976. Plaintiffs' lawsuit was not filed until August, 1979, or more than three years later. The Kansas Supreme Court ruled that pursuant to the so-called "United States Rule" (which provides for interest-on-interest), the suspense *royalty* payments made by Sun were not really royalty payments, but were, in fact, *interest* payments—thus leaving a portion of the royalties unpaid. This, in turn, led to invocation of the Kansas five year statute of limitations pertaining to written contracts, K.S.A. 60-511, rather than the three year statute otherwise applicable to plaintiffs' interest claims, K.S.A. 60-512.

The "substantive" nature of the statute of limitations issue is exemplified by the fact that at least two of the states involved, Louisiana and New Mexico, do not appear to allow awards of interest-on-interest. Louisiana Civil Code, Article 1939 (1983 Supp.); *Southern Union Exploration Co. v. Wynn Exploration Co., Inc.,* 624 P.2d 536, 543 (N.M. App. 1981). Furthermore, in Louisiana, even claims for royalty are barred by the Louisiana three year statute of limitations. *O'Neal v. Union Producing Co.,* 153 F.2d 157, 158 n.2 (5th Cir.), *cert. denied,* 329 U.S. 715 (1946). Finally, the two year Texas statute of limitations applies to claims like those presented in this case, *Hull v. Freedman,* 383 S.W.2d 236 (Tex. Civ. App. 1964);

and Oklahoma and Mississippi have three-year statutes for such claims. 12 Okla. Stat. Ann. § 95; Mississippi Code § 15-1-29 (1984 Supp.). The conflicts-of-law issue is whether Kansas should be required to classify the out-of-state claims pursuant to the laws of the state in which they arose. The statute of limitations issue is more than a procedural nicety, it is a substantive issue which affects the contractual and property rights of both Sun and the unnamed class members.

This case squarely presents the issue of whether a State's application of its own statute of limitations creates an unfairness which "rises to the level of a due process violation." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. ....., 104 S. Ct. 1473, 1480 n.10 (1984). This important constitutional issue, which has been left open by recent decisions of this Court, *id.*, should now be decided. *See, e.g.*, Weintraub, *Commentary on the Conflict of Laws* § 9.2B at 517 (2d ed. 1980); Martin, *Constitutional Limitations on Choice of Law*, 61 Cornell L. Rev. 185, 221 (1976).

CONCLUSION

For the reasons stated, the Petition for A Writ of Certiorari should be granted.

Respectfully submitted,

GERALD SAWATZKY*
JIM H. GOERING
FOULSTON, SIEFKIN, POWERS & EBERHARDT
700 Fourth Financial Center
Wichita, Kansas 67202
(316) 267-6371

WILLIAM C. PHELPS
Sun Exploration and Production Company
IV North Park
Post Office Box 2880
Dallas, Texas 75221
Attorneys for Petitioner

---

*Counsel of Record

APPENDIX

(Dated April 12, 1985)

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 34-56494-AS

Richard Wortman and Hazel Moore, et al., Appellees,

v.

Sun Oil Company, a Delaware Corporation, Appellant.

You are hereby notified of the following action taken in the above entitled case:

Motion by Appellant for Rehearing.

DENIED.

Yours very truly,

Lewis C. Carter
Clerk, Supreme Court

Date April 12, 1985

received suspense royalties from Sun as a result of Opinion Nos. 586, 699, 699H, 770 and 700A pertaining to gas rates. First class mail notices have been mailed to all of such royalty owners in accordance with pressure sensitive mailing labels furnished for each member of the class by Sun. Plaintiffs have caused the notices to be mailed and have borne the expense thereof. As a result of the notice, 105 members of the class have been specifically excluded and 50 addressees did not receive the notice, leaving total notices received of 3,003, who are class members in this case.

Testimony at time of trial included the deposition of George Wehrmaker, controller for Sun, who testified in part as follows:

> "Q. As Sun Gas received monies, FPC suspense monies, pursuant to Opinion 699, FPC Opinion 699, and pursuant to FPC Opinion 770, and any other applicable opinion where they were suspended, how were those monies handled? Were they handled like any other corporate money, put in the corporate treasury?
>
> A. I believe so, yes . . . So far as I know, that would be the way it would be treated.
>
> Q. The matter of suspense refers only to an accounting system, is that correct?
>
> A. Yes.
>
> Q. In other words, the money is not separated out and deposited in a separate bank account?
>
> A. That's correct.
>
> Q. Or separate investments of any kind?
>
> A. That's correct.

Q. The money from FPC suspense gas was used then by Sun Gas Company just as any other case or money?

A. I believe so, yes.

Q. Used to make a profit?

A. I hope so, yes."

Meanwhile, Sun made substantial profits, after taxes and interest expense, the amount for the United States being $367,000,000.00 in 1979.

Sun handled the suspense royalties for all royalty owners nation-wide in the same manner and they were paid out at the same time and in the same manner.

Sun furnished to the Federal Power Commission an agreement and undertaking to comply with the provisions of Subsection (c) of §154.102 of the Commission's regulations under the Natural Gas Act, copy which was an exhibit at time of trial and is attached hereto.

Copy of 18 CFR 154.67 and Federal Reserve Bulletins on prime rate charged by banks were made a part of the exhibits at time of trial. These exhibits show that if the rates were not approved, Sun would owe the purchasers interest at 7% per annum until October 10, 1974, at 9% per annum thereafter until September 30, 1979, and that the average prime rate, compounded quarterly, charged by banks according to Federal Reserve Bulletins until date of judgment.

As to all gas royalty owners and overriding royalty owners to whom Sun was accounting, Sun collected all proceeds from the proposed increased rates including that fraction or percentage increase which belonged either to royalty owners or to purchasers and could in no event belong to Sun. The money belonging to others was de-

posited to cash in Sun's general account and commingled with its other funds during the suspension periods.

The applicable rates of interest which Phillips would have been required to pay pursuant to the corporate undertaking are established by 18 CFR, §154.67, as follows:

Until October 10, 1974, 7%

October 10, 1974, to September 30, 1979, 9%

October to December, 1979 (June, July, August average) 11.70%

January to March, 1980 (December, January, February) 14.28%

April to June, 1980 (March, April, May) 15.39%

July to September, 1980 (June, July, August) 18.22%

October to December, 1980 (September, October, November) 11.74%

January to March, 1981 (December, January, February) 14.03%

April to June, 1981 (March, April, May) 19.98%

July to September, 1981 (June, July, August) 18.27%

October to December, 1981 (September, October, November) 20.31%

January to March, 1982 (December, January, February) 18.46%

Further rates as determined by Federal Reserve Bulletins

The dates and the amounts of suspense royalties collected by Sun and the dates and amounts of payments of this money by Sun are contained in the records of defen-

dant Sun and are readily ascertainable through the use of their computer.

CONCLUSIONS OF LAW

As a legal proposition, this case is identical to *Shutts v. Phillips Petroleum*, 222 Kan. 527, 567 P.2d 1392 (1977), cert. denied 435 U. S. 961. The only factual distinction is the FPC began making its rate nationally rather than regionally, beginning with Opinion No. 699. Insofar as royalty owners are concerned, the size and scope of the class was naturally determined by the size and scope of the FPC rate structure. Royalties under Opinion Nos. 699 and 770 were suspended, used by Sun and paid out in the same manner and at the same time to all of Sun's royalty owners involved in the six states where Sun produces natural gas.

Sun does business in Kansas and was served with process in Kansas. No question is asserted as to the jurisdiction of the court over Sun. However, Sun contends the Kansas District Court lacks personal jurisdiction over nonresident members of the plaintiff class and, therefore, the court cannot adjudicate the respective rights to interest against Sun without violating their rights to due process. However, as a general rule, "one may not claim standing . . . to vindicate the constitutional rights of some third party." *Singleton v. Wulff*, 428 U. S. 106, 114 (1976), quoting *Barrows v. Jackson*, 346 U. S. 249, 255 (1935). The purpose behind this rule is twofold:

> "First, the courts should not adjudicate such rights unnecessarily, and it may be that in fact the holders of those rights either do not wish to assert them or will be able to enjoy them regardless of whether the court litigant is successful or not. . . Second, third parties themselves usually will be the best proponents of

their own rights." (*Singleton v. Wulff*, 428 U. S. at 113-114.)

This rule is particularly compelling where Sun's position is directly adversary to the class members, the class members were given first class mail notice, and elected to stay in the action. No class member has contested the requested judgement against Sun. By attempting to eliminate nonresident members of the class, Sun is attempting to eliminate most of its liability. It is not really interested in the rights of nonresident plaintiff class members except to eliminate such liability. The members who have stayed in the class have stayed in after due notice and because they want to collect the interest which is due them. They are represented by the named plaintiffs and by attorneys for the plaintiff class, not by Sun.

Nonresident plaintiffs have chosen Kansas as the forum by electing to stay in the case rather than to exclude themselves. The U. S. Supreme Court has ruled many times on the question of whether a judgement in a plaintiff class action is binding upon class members who are not residents of the forum state. (See *Hansberry v. Lee*, 311 U. S. 32 (1940); *Soverign Camp of the Woodmen of the World v. Bolin*, 305 U. S. 66 (1938); *Supreme Council of Royal Arcanum v. Green*, 237 U. S. 531 (1915); *Supreme Tribe of Ben Hur v. Cauble*, 255 U. S. 356 (1921); *Hartford Life Insurance Co. v. Barber*, 245 U. S. 146 (1917); *Hartford Life Insurance Co. v. Ibs*, 237 U. S. 662 (1915). Each of these decisions arose within the firm factual framework, i.e., a class member seeking to enforce or attack a judgement in the court of a sister state, and in each case the due process issues were raised by a party whose rights had been adjudicated in his absence. However, it was held that such party was bound as a class member.

Sun argues that only Wortman and a few other members of the class are Kansas residents and so the class consisting of all of Sun's royalty owners in six states should not have been certified. The argument is not new. The same argument was made in Shutts, *supra,* and was answered in that opinion, Pages 541 to 558 as follows:

1. The "minimum contacts" test applies to nonresident *defendants,* not plaintiffs. (P. 541-542.)

2. The element necessary to the exercise of jurisdiction over nonresident plaintiff class members is *due process.* (P. 543.)

3. In suits of a representative character, if a class is adequately represented, its interests are protected. (543-544.)

4. "If state courts cannot maintain class action suits with nonresident plaintiffs, can the 'small man' find legal redress in our modern society. . .?" (P. 545.)

5. "The appellant argues this action should be brought in several different state courts. This risks inconsistent adjudications for a class which otherwise is treated alike." (P. 545.)

6. "There are questions of law and fact common to the plaintiff class" (residents and nonresidents). (P. 546.)

7. "After reviewing K.S.A. 60-223, we hold Kansas courts can exercise jurisdiction over nonresident plaintiffs in a class action of procedural due process guarantees are met." (P. 547.)

8. ". . . a class action may be binding on nonresident plaintiffs when a '*common fund*' is involved and where due process requirements are met." (P. 552.)

9. "Here the notice given fully comports with Federal Rule No. 23, K.S.A. 60-223 and any possible constitutional requirements." (P. 554-444.)

10. ". . . adequate representation has been accorded the plaintiff class members by their representative through his attorneys who have done a superior job. . ." (P. 556-557.)

11. The class is more manageable with nonresidents of Kansas included because all royalty owners were treated alike, regardless of residency, particular lease provisions or royalty agreements. (P. 556.)

12. All of the royalty owners have a common interest in the money collected as suspense royalties. (P. 557-558.)

13. It was the same FPC regulation that caused the suspense royalties to be collected. (P. 558.)

14. Suspense royalties were paid out pursuant to the same FPC Opinion. (P. 558.)

15. All of the gas royalty owners have an interest in common with each other, in the equivalent of a "common fund" to a claim damages payable as interest, and *they have a contact with Kansas by reason of such common interest.* (P. 558.)

All of the following cases, involve identical legal issues and factual situations, to the *Shutts* case, *supra,* and they all hold that it was proper to include nonresident plaintiff class members:

a. *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292, cert. denied 434 U. S. 1068.

b. *Gray v. Amoco Production Co.*, 1 Kan. App. 2d 338, 564 P.2d 579; 223 Kan. 441, 573 P.2d 1080.

c. *Maddox v. Gulf Oil Corp.*, 222 Kan. 733, 567 P.2d 1326, cert. denied 98 S. Ct. 1242.

d. *Sterling v. Marathon Oil Co.*, 223 Kan. 686, 576 P.2d 634.

e. *Sterling v. Superior Oil Co.*, 222 Kan. 737, 567 P.2d 1325, cert. denied 98 S. Ct. 1246.

f. *Nix v. Northern Natural Gas Producing Co. and Mobil*, 222 Kan. 739, 567 P.2d 1332, cert. denied 98 S. Ct. 1246.

g. *Helmley v. Ashland Co., Inc.*, 1 Kan. App. 2d 532, 571 P.2d 345.

The holdings of the Kansas court are consistent with U.S. Supreme Court decisions, federal court decisions and decisions of other states.

Accordingly, both because there is no present deprivation of any right of a class member and also because Sun lacks standing to argue the due process rights of its adversaries, this court declines to review the constitutional question presented.

Nonresident plaintiff class members have submitted themselves to the jurisdiction of the Kansas Court. The Kansas statute, K.S.A. 60-223, is copied after the federal rule, F.R. Civ. P. 23. Provisions in both the federal rule and the Kansas statute are practically the same pertaining to members electing to exclude themselves after proper notice. To bind absent class members, the due process protections of notice and representation must be afforded. (Mullane v. Central Hanover Bank & Trust Co., 339 U. S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).) Adequate notice has been provided in this case and Sun challenges neither the method of notice (by first class mail) nor the form or quality of representation.

It is without question in Kansas that producers owe interest to their royalty owners on FPC suspense royalties

held and used by the producers. (*Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292, cert. denied 98 S. Ct. 1246; *Gray v. Amoco Production Co.*, 1 Kan. App. 2d 338, 564 P.2d 579; 223 Kan. 441, 573 P.2d 1080; *Maddox v. Gulf Oil Corp.*, 222 Kan. 733, 567 P.2d 1326, cert. denied 98 S. Ct. 1242; *Sterling v. Marathon Oil Co.*, 223 Kan. 686, 576 P.2d 634; *Sterling v. Superior Oil Co.*, 222 Kan. 737, 567 P.2d 1325, cert. denied 98 S. Ct. 1246; *Nix v. Northern Natural Gas Producing Co.*, 222 Kan. 739, 567 P.2d 1332, cert. denied 98 S. Ct. 1246; and *Helmley v. Ashland Oil Co., Inc.*, 1 Kan. App. 2d 532, 571 P.2d 345.)

Sun is liable for interest on all royalty and overriding royalty retained by it during the period that royalty was collected and suspended by Sun pending approval by the FPC (FERC) and the courts of certain rate increases under Opinion No. 586 as to suspend royalties paid in 1978 and under Opinion No. 699 and 770, with the exception of those who excluded themselves and those whom the first class mail notice did not reach.

The applicable rate of interest for which Sun is liable is seven percent (7%) per annum until October 10, 1974, nine percent (9%) per annum thereafter until September 30, 1979, and thereafter at the average prime rate, compounded quarterly, as provided by 18 CFR 154.67.

The period of time for which interest is due shall be calculated from the date or dates said suspense royalty was received by Sun to the date or dates said suspense royalty was paid. Following the respective payouts, the remaining interest (principal according to the U. S. Rule) shall bear interest according to 18 CFR 154.67.

Sun has or can compile through its data base and computer program all of the necessary information with which to calculate the amount of interest due and owing.

All findings and orders set forth in the Journal Entry certifying the class are incorporated herein.

Excluded from this judgment are those parties who have filed herein their exclusion and those parties who did not receive notice.

Interest statutes in other states are not applicable here. (*Shutts, supra,* Pages 563-566.)

> "In the instant case Phillips was obligated by FPC order to pay gas purchasers seven percent (7%) until September 18, 1970, and thereafter eight percent (8%) interest on the gas purchaser's share of the suspense monies. Here equitable principles require, and contractural principles dictate, that the royalty owners receive the same treatment as to their share." (*Shutts, supra,* Page 563.)

> "Phillips cites the interest laws of Kansas, Texas and Oklahoma. K.S.A. 16-201 provides. . . Texas Rev. Civ. Stat., Art 5069-1.03 (1971) states. . . Oklahoma stat., title 15, §266 (1966) states. . . all these statutes refer to situations where there is no agreement as to the rate of interest. Here that situation does not exist." (*Shutts, supra,* Pages 563-564.)

> "We are dealing with 'suspense royalties' which never could or would belong to Phillips. This was the equivalent of a common fund which was accumulated and used by Phillips. . . If the FPC had denied all of Phillips' rate increase applications, Phillips would have had to pay seven percent (7%), and later eight percent (8%), interest to the gas purchasers *pursuant to its express agreement and corporate undertaking with the FPC. Thus, Phillips has made an express agreement,* with regard to the monies accumulated in the suspense fund by Phillips *to pay seven percent*

and later eight percent interest, as ultimately determined by the FPC Opinion No. 586."

". . . the FPC did require Phillips to agree to pay interest on the suspense monies they held, *which agreement the members of the plaintiff class herein assert as an appropriate measure of damages, expressed in terms of interest, for the commingling and use of the monies by Phillips."* (*Shutts, supra,* Pages 564-565. Emphasis supplied.)

Thus, it is the Kansas law that neither the statutory interest rates of Kansas nor the statutory interest rates of other states where there are nonresident lessors, apply. Rather, the rates of interest as determined by FERC apply as a measure of damages.

Sun may not enrich itself in the absence of any contractural sanction or seize upon the procedural complexities of the FPC to avoid responsibility for an appropriate measure of damages, expressed in terms of interest.

Judgement shall be entered herein as of December 12th, 1983, for plaintiff class in accordance with the foregoing conclusions. Since judgement is for damages for unjust enrichment, expressed in terms of interest, the statutory judgement rate of 15% (K.S.A. 16-204) should apply.

Plaintiff is requested to draw the appropriate Journal Entry to conform to the foregoing findings of fact and conclusions of law.

/s/ Clarence E. Renner
CLARENCE E. RENNER
District Judge

Original - file
Copy: Mr. Luke Chapin
Mr. Gerald Sawatzky

(Filed December 29, 1983)

IN THE DISTRICT COURT OF BARBER COUNTY, KANSAS

No. 79C40

RICHARD WORTMAN and HAZEL MOORE, Individually and as representatives of all producers and royalty owners to whom Sun Oil Company has made or should make payment of suspended proceeds or royalties pursuant to FPC Opinions or FERC,
Plaintiffs,

vs.

SUN OIL COMPANY, a Delaware Corporation,
Defendant.

JOURNAL ENTRY OF JUDGMENT

ON the 13th day of October, 1983, at ten o'clock a.m., this case comes regularly on for hearing and trial. Plaintiffs appear by and through W. Luke Chapin of Chapin & Penny, Attorneys, Medicine Lodge, Kansas 67104; and Ed Moore, Ginder & Moore, 202 South Grand, Cherokee, Oklahoma 73728. Defendant Sun Oil Company appears by and through William C. Phillips, Sun Exploration & Production Company, IV North Park, P. O. Box 2880, Dallas, Texas 75221; and Gerald Sawatzky, Foulston, Siefkin, Powers & Eberhardt, 700 Fourth Financial Center, Wichita, Kansas 67202.

THEREUPON, parties announce to the court that they are ready for trial; the evidence is introduced; and the court takes the matter under advisement, asking for written suggested finding of fact and conclusions of law from the parties within thirty days.

THEREAFTER, and as of December 12, 1983, the court, having heard the evidence and having received suggested findings and conclusions from the parties, and being well and fully advised in the premises, renders its memorandum decision, which is made a part hereof by reference.

The court finds, generally, in favor of plaintiff class and in accordance with their requested findings of fact and conclusions of law.

IT IS THEREFORE BY THE COURT CONSIDERED, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1) All findings and orders set forth in the Journal Entry certifying the class are incorporated herein.

2) The findings, conclusions and orders set forth in the court's Memorandum Opinion and Decision of December 12, 1983, are incorporated herein and made a part hereof.

3) Plaintiff class is granted judgment against Sun for interest on all royalty and overriding royalty retained by it during the period that royalties were collected and suspended by Sun pending approval by the FPC (FERC) and the courts of certain rate increases under Opinion No. 586, as to suspended royalties paid in 1978; and under Opinion Nos. 699 and 770, with the exception of those who excluded themselves and those whom the first class mail notice did not reach.

4) Sun Oil Company is instructed to compile necessary information and to calculate the amount of interest due and owing plaintiff class and each member thereof, according to findings and conclusions of the court.

5) Applicable rate of interest to be used by Sun in calculating amount due each royalty owner is 7% per annum until October 10, 1974, 9% per annum thereafter until September 30, 1979, and thereafter at the average

prime rate, compounded quarterly, as provided by 18 CFR 154.67.

6) Judgment is entered herein as of December 12, 1983, and since judgment is for damages for unjust enrichment, expressed in terms of interest, the statutory judgment rate of 15% (K.S.A. 16-204) shall apply following date of judgment.

7) Sun shall inform attorneys for plaintiff class when interest calculations have been completed and as to the total amount of the same; and the court shall then set the matter for further hearing as to attorneys' fees for attorneys for plaintiff class.

/s/ Clarence E. Renner
CLARENCE E. RENNER
District Judge

APPROVED AS TO FORM:

Ed Moore
GINDER & MOORE
Cherokee, OK 73728

W. Luke Chapin
CHAPIN & PENNY
Medicine Lodge, KS 67104

By /s/ W. Luke Chapin
Attorneys for Plaintiff Class

William C. Phelps
Sun Exploration & Production Company
Dallas, TX 75221

Gerald Sawatzky
FOULSTON, SIEFKIN, POWERS & EBERHARDT
Wichita, KS

By .....
Attorneys for Defendant
Sun Oil Company

§ 60-223. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate

over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in prosecuting or defending separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against members of the class; (C) the appropriate place for maintaining, and the procedural measures which may be needed in conducting, a class action.

(c) Determination by Order Whether Class Action to Be Maintained: Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement and before the decision on the merits of an action brought as a class action, the court shall determine by order whether it is to be maintained as such. Where necessary for the protection of a party or of absent persons, the court, upon motion or on its own initiative at any time before the decision on the merits of an action brought as a nonclass action, may order that it be maintained as a class action. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) The judgment in an action maintained as a class action shall extend by its terms to the members of the class, as defined, whether or not the judgment is favorable to them.

In any class action maintained under subdivision (b) (3), the court shall exclude those members who,

by a date to be specified, request exclusion, unless the court finds that their inclusion is essential to the fair and efficient adjudication of the controversy and states its reasons therefor. To afford members of the class an opportunity to request exclusion, the court shall direct that reasonable notice to be given to the class, including specific notice to each member known to be engaged in a separate suit on the same subject matter with the party opposed to the class.

(3) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues such as the issue of liability, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this section shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this section applies, the court may, without limitation, make appropriate orders: (1) Settling the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, or to include such allegations, and that the action in either case proceed accordingly. The orders may be combined

with an order under K.S.A. 60-216, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. An action brought as a class action, whether or not ordered to be maintained as provided in paragraph (1) of subsection (c), shall not be dismissed or compromised without the approval of the court, and the court in its discretion may order that notice of a proposed dismissal or compromise be given to the class in such manner as the court may direct.

PETITIONER'S STATEMENT PURSUANT TO SUPREME COURT RULE 28.1

Sun Oil Company's assets have been transferred to Sun Exploration and Production Company. The parent company in both instances is Sun Company, Inc. The non-wholly owned subsidiaries of Sun Company, Inc. are Suncor Inc. and Sunolin Chemical Company. The non-wholly owned subsidiaries of Sun Exploration and Production Company are Canyon Reef Carriers, Inc.; East Texas Salt Water Disposal Company and Van Salt Water Disposal Company.